

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

UNITED STATES OF AMERICA	. CRIMINAL NO. 12-82-M-LDA
	.
V.	. PROVIDENCE, RHODE ISLAND
	. NOVEMBER 26, 2012
BILLIE R. SCHOFIELD	.
Defendant	.
.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE LINCOLN D. ALMOND
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the government:	UNITED STATES ATTORNEY'S OFFICE
	BY: Sandra Hebert, Esq.
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For the defendant:	Billie R. Schofield, pro se
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Court Reporter:

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

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1 (Court called into session at 1:05:50 p.m.)

2 THE COURT: You may be seated. Good afternoon.

3 COUNSEL: Good afternoon.

4 THE COURT: The case before the Court today is
5 the matter of the United States of America v. Billie R.
6 Schofield, Case No. CR-12-82M. The matter's before the
7 Court today for a hearing on two motions filed by the
8 government, one for detention and the other for forfeiture
9 of bond.

10 Can the individuals present identify themselves
11 for the record, please, starting first with the
12 government.

13 MS. HEBERT: Sandra Hebert for the United
14 States.

15 THE DEFENDANT: Billie Russell of the family
16 Schofield.

17 THE COURT: All right. The matter was before
18 the Court two weeks ago. It was continued over objection
19 of the government at the request of the defendant to
20 today. I did receive a filing made today by the defendant
21 entitled affidavit of facts in which he outlined certain
22 legal arguments that he wishes to be addressed today in
23 this proceeding. I am not going to address those matters
24 in today's proceeding. They go to the substantive charges
25 brought against this defendant and they are not before the

1 Court today. That matter's been I assume docketed by the
2 clerk's office. Judge McConnell can address that in due
3 course. So I'm not going to address that today.

4 I also want to make some statements which in
5 order to try to narrow and focus this proceeding for the
6 benefit of all involved. Before I do that I want to again
7 remind you, Mr. Schofield, that you do have the right to
8 remain silent. If you do make any statements those
9 statements may be used against you in the future.

10 Do you understand that, sir?

11 THE DEFENDANT: (No verbal response.)

12 THE COURT: All right, the defendant is not
13 responding so I have advised him of that right previously
14 and I believe he understands that right. I also want to
15 remind you, Mr. Schofield that you do have a right to
16 counsel. You've chosen to exercise your right against my
17 advice to represent yourself in this matter and also have
18 objected to the Court's efforts to appoint standby
19 counsel. As I reminded you previously, if you wish to
20 change your mind and reconsider and request court
21 appointed counsel or retain an attorney to represent you
22 in this proceeding, you may do that at any point either
23 with me or with District Judge McConnell.

24 Do you understand that, Mr. Schofield?

25 THE DEFENDANT: Your Honor, I attempted to

1 consult with counsel yesterday between the hours of 11
2 and one, an attorney in Providence by the name of John
3 McDonald, and I called my probation officer on Saturday,
4 left a message requesting to be able to leave my residence
5 to meet with him between those hours. The probation
6 officer called me at quarter to one saying that he didn't
7 understand the message so my opportunity to meet with the
8 attorney was unavail, I wasn't able to meet with him. I
9 still would like a opportunity to meet with that counsel
10 or possibly ask for court appointed counsel if possible.

11 THE COURT: All right. Well if you wish to
12 request court appointed counsel you would need to file
13 with the Court an updated financial affidavit. You
14 previously filed a financial affidavit when I initially
15 provided you with court appointed counsel many months ago,
16 when I appointed Mr. Briody to represent you. The
17 information that you provided at that time is some months
18 old so I would need updated information to determine if
19 you're eligible, financially eligible for court appointed
20 counsel. So if that's a request you want to make of the
21 Court you can coordinate with pretrial services to meet
22 with them for the purpose of providing a financial
23 affidavit to the Court and it will be reviewed and
24 considered. You do have the right to retain an attorney
25 at any time. If you retain an attorney and make

1 arrangements with an attorney who's licensed to practice
2 before this court, that attorney can enter the case simply
3 by filing an entry of appearance and that attorney would
4 then become your attorney of record.

5 Do you understand that sir?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: If you wish to meet with an attorney
8 that request will of course be approved to meet with an
9 attorney. I don't know what happened with the
10 communication with Mr. Dufresne. I believe Mr. Dufresne
11 will continue to supervise Mr. Schofield, all right, well
12 I will advise Mr. Dufresne if you make such a request in
13 the future he's to approve a request if you want to meet
14 with an attorney in the future.

15 Now in terms of today's proceeding I believe, I
16 know the government has indicated to the clerk they have
17 some witnesses to present to the Court. Frankly, I don't
18 know if that's necessary. I believe it is undisputed that
19 the defendant did not appear for jury empanelment before
20 Judge McConnell on November 15th, the scheduled date and
21 time. I think it's also undisputed that based on the
22 record of filings in this case that the defendant was
23 provided with advance notice of that date and time, and
24 also I think it's undisputed that the defendant was taken
25 into custody based on an arrest warrant on Exchange

1 Terrace approximately one city block from the courthouse.
2 So I believe that's all undisputed. The issue of the
3 circumstances of the effectuation of the arrest and
4 anything subsequent to that frankly are not relevant to
5 the issue of whether the failure to appear warrants
6 detention or forfeiture of bond.

7 So before I move forward with this proceeding,
8 I've just stated a couple facts, Mr. Schofield, that I
9 believe are undisputed. What I would like this hearing to
10 be is for you to have an opportunity to provide any
11 information or evidence to me that you believe I should
12 consider in determining whether you violated your
13 conditions of release; if there are any mitigating
14 circumstances or the reasons why you didn't appear. But
15 am I correct in stating that it is undisputed that you had
16 notice of the jury empanelment and did not appear in the
17 courtroom as scheduled, you personally; is that correct?

18 THE DEFENDANT: That is correct, Your Honor. I
19 do have a statement concerning that date and the
20 surrounding--

21 THE COURT: Okay.

22 THE DEFENDANT: --incident.

23 THE COURT: I will just advise you when make
24 that statement - what I'm interested in is what were the
25 reasons that you were not in the courtroom at 9:30 a.m.

1 when Judge McConnell was ready to proceed with the jury
2 empanelment in your case. I don't want to hear a
3 statement similar to the one you gave me when you first
4 appeared before the Court following your arrest regarding
5 the circumstances of your arrest. That's not before me
6 today and I'm not going to consider that. So if that's
7 part of your statement I'd suggest you consider narrowing
8 the statement.

9 THE DEFENDANT: What statement was that, sir?

10 THE COURT: The statement you just told me you
11 were going to give to the Court.

12 THE DEFENDANT: No, it's not a prepared
13 statement. I just, I just have a few points concerning
14 that--

15 THE COURT: Okay.

16 THE DEFENDANT: --day.

17 THE COURT: Well hold on a second. You can have
18 a seat, Mr. Schofield--

19 THE DEFENDANT: Okay.

20 THE COURT: --and then I'll get to you.

21 THE DEFENDANT: Okay.

22 THE COURT: With those observations and the fact
23 that the defendant is not - you're also admitting that you
24 were arrested in a vehicle on Exchange Terrace?

25 THE DEFENDANT: Yes, I was.

1 THE COURT: Okay.

2 THE DEFENDANT: My personal vehicle.

3 THE COURT: Okay. From the government's
4 perspective what evidence beyond that were you seeking to
5 present today through what witnesses?

6 MS. HEBERT: Your Honor, the government intended
7 to call two deputy United States marshals that would have
8 established first of all with respect to the defendant's
9 arrest in his vehicle that he refused to obey their
10 commands. He refused to obey the commands to raise his
11 hands and instead was making motions with his hands
12 towards the steering column in which the keys to the
13 vehicle were located. He refused to--

14 THE DEFENDANT: I object.

15 THE COURT: Hold on. This is not - I'm asking
16 her to describe it. I'm not taking it as true and it's
17 not evidence at this point Mr. Schofield. I just wanted
18 to hear from her what her intentions were so I could give
19 both sides some direction to move this forward.

20 All right, go ahead, Ms. Hebert.

21 MS. HEBERT: Yes, Your Honor. He refused to
22 obey two commands to raise his hands. He then was ordered
23 to get out of the vehicle on two different instances. He
24 also refused to obey those commands and as a result he was
25 removed from the vehicle. Inside that vehicle was \$10,000

1 in cash all in \$100 bills and there was a travel bag.
2 They contained clothes and next to that travel bag was a
3 toiletry kit. The government thinks all of that is
4 relevant to the Court's consideration here today.

5 Furthermore, should the Court be accepting any
6 statements made by the defendant as facts concerning this
7 event, the government believes that the defendant's
8 credibility is at stake and the government's position is
9 that the deputy U.S. marshal's testimony would establish
10 that he has no credibility. The defendant is asserting
11 that the marshals brutalized him and that they abused him
12 on two separate occasions. He denied to the deputy U.S.
13 Marshal that he even had any injuries. He's also despite
14 his statements to the contrary--

15 THE COURT: Well let me, as I stated to Mr.
16 Schofield this, the motions brought by the government and
17 the matters before the Court today I don't want to try the
18 circumstances of his arrest in this proceeding.

19 MS. HEBERT: I agree that whether--

20 THE COURT: Aren't the issues before me what
21 action I should take, if any, regarding his failure to
22 appear in Judge McConnell's courtroom at 9:30 a.m.--

23 MS. HEBERT: I think that what's--

24 THE COURT: --and whether that - let me finish.

25 MS. HEBERT: I apologize.

1 THE COURT: And whether that presents a
2 violation of his condition of release that he appear for
3 court proceedings?

4 MS. HEBERT: I think that with respect to his
5 violation of the conditions of release it's undisputed
6 that he did violate the conditions of release; however,
7 since the Court is inquiring of the defendant as to any
8 reasons or mitigating circumstances as to his failure to
9 appear, the defendant's credibility is now placed in issue
10 and the government is prepared to impeach his credibility
11 both in terms of his assertions of injury as well as his
12 assertions as to the theft of \$5,000 by the deputy U.S.
13 marshals.

14 THE COURT: All right. Well frankly I don't
15 want to get into that in this proceeding. I don't think
16 it's an appropriate, an appropriate issue for this
17 proceeding. You indicated to me when the defendant
18 appeared before the Court on the 16th and also in objecting
19 to my providing the defendant with a continuance of this
20 hearing to today's date that he presented a risk of
21 flight. He's here today. He's on electronic monitoring
22 and pretrial services has advised me the defendant has
23 been compliant. I know the matter's down for jury
24 selection and trial on December 4th before Judge McConnell.

25 MS. HEBERT: That's correct, Your Honor.

1 THE COURT: Is that still scheduled?

2 MS. HEBERT: That is correct.

3 THE COURT: So frankly I don't want, I believe
4 it's proper for this proceeding to morph into a trial
5 regarding any post-arrest allegations this defendant may
6 be making and I'm not going to allow this proceeding to
7 turn into that.

8 MS. HEBERT: I understand the Court's concern,
9 Your Honor, but with all due respect the government thinks
10 that if the Court is going to at all rely on any sort of
11 explanation made by the defendant, then the defendant's
12 credibility is at issue and the government should be given
13 an opportunity to impeach his credibility.

14 THE COURT: Is it still the government's
15 position that I should detain this defendant--

16 MS. HEBERT: It is the govern--

17 THE COURT: --pending trial?

18 MS. HEBERT: It is the government's position
19 that you should detain him, Your Honor.

20 THE COURT: Based on him being a danger to the
21 community or risk of flight?

22 MS. HEBERT: Your Honor, the defendant faces a
23 five year mandatory minimum sentence.

24 THE COURT: Well answer that question, based on
25 him being a danger to the community or a risk of flight?

1 MS. HEBERT: Both. He has twice been a
2 fugitive. Twice in this case the U.S. marshals have been
3 called upon to arrest the defendant when this defendant
4 has known that he was in the first instance wanted and in
5 the second instance required to be in court. You don't
6 have to go to Colorado to be a failure to appear. You can
7 be a failure to appear by being simply within blocks of
8 the courthouse, but nonetheless, 52 jurors showed up for
9 jury selection on November 15th. The government showed up
10 for jury selection. The case agent showed up and the
11 Court was there. There was one person that wasn't there
12 and it was this defendant and as a result that created
13 great expense to the Court, great inconvenience to the
14 parties and it thwarted justice in this case. It was
15 obstructing the lawful pursuit of this case and the
16 justice in this case. And so whether or not this
17 defendant intends to run to Guatemala or to the Dominican
18 Republic isn't really the issue for the Court. The
19 question is whether or not you can believe that this
20 defendant will appear when he says he will appear. The
21 government contends he lacks credibility. The government
22 contends his track record shows that this Court cannot
23 count on him to appear for proceedings, and so the
24 government says that or the government's position I should
25 say is that given that this case involved a drug

1 trafficking offense, a five year mandatory minimum term
2 of imprisonment and the fact that this defendant has shown
3 himself as a failure to appear all establishes the fact
4 that the defendant cannot rebut the presumption that he
5 should be detained.

6 THE COURT: What I have before me is I don't
7 know about the other instance where you're indicating this
8 defendant was a fugitive.

9 MS. HEBERT: Your Honor, I--

10 THE COURT: And I don't want to really get into
11 that. This is a pre, when he was charged by criminal
12 complaint?

13 MS. HEBERT: Correct, Your Honor.

14 THE COURT: All right. That's not before me
15 today. The issue before me today is he's in the proximity
16 of the courthouse. He doesn't show up for empanelment as
17 scheduled. He's arrested, brought before the Court and
18 gives some reasons why he didn't come into the courtroom.
19 So what I'd like to do is hear from the defendant as to
20 what those reasons were then consider them and decide
21 whether, what actions of the Court are warranted by those
22 facts. I don't want to turn this into a trial on the post
23 arrest issues, and I don't think it's appropriate to make
24 it anything beyond what it is which I think it's now
25 proceeding.

1 MS. HEBERT: I think, Your Honor, that the
2 instances surrounding his initial arrest which if you
3 recall the government objected--

4 THE COURT: I disagree. I'm just going to hear
5 his statement and we'll see where it goes.

6 Mr. Schofield you wish to make a statement
7 regarding the circumstances--

8 THE DEFENDANT: I do.

9 THE COURT: --of your failure to appear for jury
10 empanelment on the 15th of November?

11 THE DEFENDANT: I do, Your Honor.

12 THE COURT: On the November the 15th I had a
13 witness and a messenger that was not allowed to deliver a
14 message to the Court before Judge McConnell. The
15 messenger was intimidated by the marshals, by the U.S.
16 marshals court personnel. The court personnel have my
17 phone number on record. No call was received by me. I
18 was honestly sick that day. I was not able to attend the
19 hearing and sent a messenger and two other people in my
20 behalf to notify the Court of such. During that, it's my
21 understanding that during that court hearing the court
22 recorder and the attorneys met with the judge behind
23 closed doors to hold court excluding my witnesses from
24 hearing anything. I've already requested a transcript of
25 that hearing and I'm waiting for that. I believe nothing

1 needs to be changed right now relative to the appearance
2 bond. I never intended to dishonor this Court as
3 evidenced by my three witnesses present in court that day.
4 If this matter moves to trial and my bond is revoked, I
5 will be at a huge disadvantage since I will not be able to
6 prepare for the trial.

7 As things stand today I'm already unable to
8 properly seek counsel or any assistance due to the fact
9 that I am under house arrest. I therefore wish for the
10 Court to end the house arrest restriction so I can freely
11 move about and gather the information and assistance I
12 need to defend myself in this matter.

13 THE COURT: All right. Thank you, sir.

14 Anything briefly the government wishes to
15 respond to?

16 MS. HEBERT: Well, Your Honor, I was in court on
17 November 15th and nobody, no deputy U.S. marshal
18 intimidated anybody in the courtroom. I saw it with my
19 own eyes what went on in the courtroom and there was no
20 intimidation. There also was no message delivered, but
21 even if there had been a message delivered that is not how
22 this works. That is not how somebody that is given the
23 privilege in a mandatory detention case to be out on bond,
24 that is not how somebody is allowed to excuse themselves
25 from jury selection. The defendant failed to appear.

1 Fifty-two jurors did. The defendant did not. It's the
2 government's position that the Court should detain the
3 defendant.

4 THE COURT: All right. I am not going to detain
5 the defendant. I don't find that he presents at this
6 point a risk of flight or a danger to the community. I am
7 going to change his release conditions from home
8 incarceration to what we refer to as home detention which
9 will give him more flexibility if he wishes to meet with
10 counsel to prepare for this trial. Home detention will
11 restrict you to your residence at all times except for
12 employment, education, religious services, medical,
13 substance abuse or mental health treatment appointments,
14 visits with an attorney, court appearance and any other
15 activities that are approved in advance by your
16 supervising pretrial services officer. So that will
17 provide you with some additional flexibility.

18 I agree with the point the government has made
19 in this case that the proper way to communicate with this
20 Court if you are a pro se defendant is personally whether
21 that be by filing with the clerk's office which is the
22 formal way, appearance in court or in an emergency an
23 attempt to contact the court by telephone. Sending
24 messengers to the court who are not lawyers or authorized
25 under the law applicable in this court to represent you is

1 not an appropriate way to deliver a message to the
2 Court. Your failure to appear whether you were ill or not
3 I cannot make a determination at this point. You state
4 you were ill. I have no evidence to dispute that. I have
5 no evidence to support that you were ill. You were fit
6 enough to get yourself within a hundred yards or so of the
7 courthouse. Whether you could have gotten the other
8 hundred yards into the courthouse to either make a
9 statement at the clerk's office or file something I do not
10 know.

11 I agree with the government additionally, in
12 addition to agreeing with them that sending a messenger to
13 the court under these circumstances is not an appropriate
14 way to communicate with the Court. I also agree with the
15 government's point that justice was not served and that
16 the Court, the government and 52 citizens who were ordered
17 to appear for jury services as is their obligation as
18 jurors were all inconvenienced. In addition the
19 government had an expense. All those jurors had to be
20 paid their daily jury fee as well as mileage and parking
21 expenses to appear. All of that was wasted money and I
22 find that the reason it was wasted is your failure to
23 appropriately communicate with the Court.

24 So I do find that you did not appear for court
25 proceedings as ordered. Under the entirety of the

1 circumstances of this case and the information before
2 me, I do not find that the appropriate remedy for that at
3 this stage is to detain you as the government has
4 requested in its motion for detention. So I will deny
5 that motion. As to the government's motion for forfeiture
6 of the entirety of the \$20,000 appearance bond I don't
7 think that is warranted, but I think a partial forfeiture
8 of the bond in the amount that it cost the government for
9 the appearance of those jurors is an appropriate sanction
10 for the failure to appear. I've been advised by the
11 office that the total cost and attendance fees, parking
12 and mileage for those 52 jurors for that date was
13 \$3,393.47 and I will issue a written order that the
14 defendant forfeit that much of the \$20,000 appearance bond
15 to the United States government for a sanction for his
16 failure to appearance.

17 I am going to continue the defendant on his
18 modified conditions of release which will include the home
19 detention restriction I've just stated for him as well as
20 electronic monitoring pending further proceedings. The
21 next proceeding in this case that's been scheduled by the
22 Court and noticed to the defendant is a jury empanelment
23 to be followed immediately by the commencement of trial
24 starting in Judge McConnell's courtroom in the main
25 courthouse on December 4th at, does it give a time, Ms.

1 Noel, is it 9:30?

2 THE CLERK: It is 9:30.

3 THE COURT: 9:30 in the morning. Do you
4 understand that, Mr. Schofield?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: All right. So I will issue a
7 written order regarding that partial forfeiture of the
8 bond.

9 Ms. Noel, if you could provide an amended
10 conditions of release that include the home detention
11 restriction and provide a copy of that to Mr. Schofield so
12 he has a description of that condition. Pretrial
13 services, if you could alert Mr. Dufresne that I have
14 stepped down the defendant's restriction from home
15 incarceration to home detention so he can proceed
16 accordingly. Court will be in recess.

17 THE CLERK: All rise.

18 (Court adjourned at 1:30:35 p.m.)

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1 CERTIFICATION

2 I, Maryann V. Young, court approved transcriber,
3 certify that the foregoing is a correct transcript from
4 the official digital sound recording of the proceedings in
5 the above-entitled matter.

6
7 /s/ Maryann V. Young

June 13, 2014

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